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Ministère de l'Industrie, des Postes et Télécommunications
et du Commerce Extérieur

Direction Générale des Postes et Télécommunications

Le Directeur Général

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Paris, April 7th, 1995

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Dear Mr Caton,

You will find enclosed the original and four copies of the comments the Directorate General for Posts and Telecommunications, authority in charge of the regulation of the French telecommunications sector, wants to file before the Federal Communications Commission, in relation to the Notice of Proposed Rulemaking in the Matter of Market Entry and Regulation of Foreign-affiliated Entities, adopted by the FCC on February 7th, 1995, and released on February 17th, 1995.

Yours sincerely,

Bruno Lasserre

Enclosed : Original and four copies of the comments of the DGPT
on the NPRM on market entry and regulation of foreign-affiliated entities.

F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Comments from the Directorate General of Posts and Telecommunications (France) on the Notice of Proposed Rulemaking in the Matter of Market Entry and Regulation of Foreign-affiliated Entities

The Directorate General of Posts and Telecommunications (DGPT) presents its compliments to the Federal Communications Commission and has the honor to refer to the Notice of Proposed Rulemaking adopted by the FCC on February 7th, 1995, and released on February 17th, 1995, in the matter of market entry and regulation of foreign-affiliated entities.

The DGPT is the authority, within the Ministry of Industry, Posts and Telecommunications and International Trade, in charge of the regulation of both the domestic and international aspects of the telecommunications sector in France. In this respect, it welcomes this opportunity to express its views, and to comment on the FCC's proposal.

The DGPT considers that the proposal, the basic principle of which is to promote competition between all actors, is a positive step towards open telecommunications markets.

During bilateral talks held with the State Department, the Federal Communications Commission and the National Telecommunications and Information Administration, the DGPT has insisted several times on the impediments created by the provisions set out in sections 310(a) and (b) of the Communications Act of 1934, to the establishment of a truly global telecommunications market with international actors present all over the globe.

The DGPT welcomes this proposal, based on bilateral reciprocity, and is confident that it will be positive input for multilateral negotiations.

The proposed NPRM will benefit the international telecommunications sector, on condition that it applies the following four principles :

- the new rulemaking should replace the current procedures, and should not be an addition to them ;
- it should be compatible with a multilateral approach ;
- it should be based on a market-segment approach ;
- it should take into account the evolution of regulations and markets.

1. To replace the current procedures

Current procedures are based on two sections of the Communications Act of 1934: section 214 on common carrier regulation, and section 310 on radio licences.

The proposed rulemaking is intended to establish coherent principles which would guide the FCC's deliberations on modifications to licences granted under section 214. It also proposes that the FCC take into consideration market openness when conducting enquiries which have been requested in accordance with section 310, if foreign interest in the entity is above a determined threshold as mentioned in the Act.

The DGPT welcomes this initiative, as it aims to promote competition between all actors, and understands that, according to the new rulemaking, the FCC will be in a position to use its waiver if the openness of the foreign market is proven.

There is the risk that the new rulemaking might be added to the current procedures, thus increasing the scope and the duration of enquiries. Any such increase would be perceived by France as the implementation of new barriers to the entry of foreign entities on the US telecommunications markets, and would cause France serious concern.

However, the DGPT is confident that the proposed measures will be adopted as alternatives to the current ones, and will provide clarity and equity for all foreign-affiliated entities wishing to enter the US telecommunications market.

In France, restrictions regarding the origin of capital only exist in the case of radio-licences (section L33-1 of the 1990 Loi sur les Télécommunications), which apply to mobile services provided to the public (cellular phone, paging). These restrictions apply neither to European companies (ie. companies incorporated in the European Union, regardless of the origin of their capital), nor to the holding company of the licensee. Moreover, there are no restrictions on the nationality of the board members of the licensee; the DGPT may apply a waiver, on a case by case basis. This policy has enabled significant participation by US companies, such as Southwestern Bell, US West and Airtouch, in French mobile licence-holding companies.

Moreover, as a result of the recent decision to liberalise public voice telephony and infrastructure by 1 January 1998, the French government will define a new policy regarding the treatment of foreign-affiliated companies which wish to obtain licences in these two market segments.

The DGPT will carefully analyse the effects of the proposed measures, if adopted, and will take this analysis into account when readjusting the French regulatory regime.

2. To be compatible with a multilateral approach

Evaluating the openness of a market may prove to be a rather subjective process. One of the goals which the FCC aims to achieve in adopting the new rulemaking is to give an incentive to other countries to open up their telecommunications market. Hence, it is likely that other countries might adopt a similar procedure.

Therefore, it is essential that all the countries which adopt the same approach can rely on a common and sole evaluation grid, enabling comparable evaluations.

For this reason France proposes that such evaluation be carried out within the framework of a multilateral process (such as the World Trade Organization), to ensure better objectivity.

In this regard, the DGPT would support the inclusion of this point in the mandate of the Negotiating group on Basic Telecommunications.

3. To follow a market-segment approach

The structure of the telecommunications market may vary a lot from one country to another. It generally reflects the structure of the economy, and is rooted in the economic history of the country.

The diversity of market structure has direct implications on the regulatory environment and on the segmentation of the telecommunications market.

Thus, when evaluating market openness, the telecommunications market should not be considered as a whole, but by market segment. Evidently, for such a reciprocal evaluation to be possible comparable market segments need to be clearly defined. It would be perhaps be possible to use the work carried out within the World Trade Organization for this (Negotiating group on Basic Telecommunications).

The DGPT welcomes the fact that the FCC has not chosen the "mirror reciprocity" approach, and invites the FCC to take into account the specificities of each market considered, including the difference in the regulatory frameworks for broadcasting issues and for telecommunications.

4. Taking into account the evolution of regulations and markets.

Telecommunications regulation is an ever-changing sector. France, together with the European Union, has undertaken deep reflexion on the evolution of the regulatory environment in this leading sector of the economy. The outcome has been strong commitment within the European Union to the liberalization of voice telephony - the only service not yet open to competition - and infrastructures, by 1 January 1998.

France, which has played an active role in adopting these measures, has also asked the Commission to put forward proposals, as early as possible, to enable the use of alternative infrastructures for services which have already been liberalized.

When evaluating openness of markets, it is necessary to take into account the developments planned in regulations : it would be dangerous to fix on an "instantaneous" picture of market openness.

Moreover, markets are changing. Telecommunications operators are increasingly becoming global operators, providing services on an international scale, and offering seamless coverage. The globalization of the sector will have unavoidable repercussions on regulatory frameworks, which will have to be adapted to the ever-changing market. Indeed, markets will demand the evolution of certain regulatory schemes : foreign restrictions on ownership will be one of them.

Thus, the DGPT hopes that the FCC will evaluate with a dynamic view, and will take into account the planned evolution in regulation and markets.

Conclusion

The DGPT considers that the NPRM is a positive step, which will enable the reciprocal opening of telecommunications markets, on condition that the above-mentioned principles are applied.

The regulatory framework in France is due to evolve in order to undertake the liberalization of voice telephony and infrastructures by 1 January 1998; all signals given by France's foreign partners will be taken into account.